

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

BERKLEY NATIONAL INSURANCE)
COMPANY,)
Plaintiff,)
v.)
XTO ENERGY, INC.,)
Defendant, Counter-)
Plaintiff and Third-Party Plaintiff)
v.)
BERKLEY NATIONAL INSURANCE)
COMPANY,)
Counter-Defendant,)
and)
COMMERCE AND INDUSTRY)
INSURANCE COMPANY, TORUS)
NATIONAL INSURANCE COMPANY)
n/k/a STARSTONE NATIONAL)
INSURANCE COMPANY, and SENECA)
SPECIALTY INSURANCE COMPANY,)
Third-Party Defendants.)

Civil No. 1:17-CV-00138

DECLARATION OF PRANO thi PRABHAKARA

Pursuant to 28 U.S.C. § 1746, Pranothi Prabhakara declares as follows:

1. My name is Pranothi Prabhakara. I am over 18 years of age, of sound mind, and fully competent to give this declaration. The facts stated herein are true and correct and based on my personal knowledge.

2. I am employed by AIG Claims, Inc. as a Complex Director. AIG Claims, Inc. is the authorized claims administrator for Commerce & Industry Insurance Company (“CIIC”) and I was responsible for adjusting the claim at issue in this declaratory judgment action on behalf of CIIC. In my capacity as Complex Director, I am familiar with the business records maintained in the ordinary course of business for CIIC.

3. The following exhibits to CIIC’s Memorandum of Law and Statement of Uncontested Material Facts in Support of Its Motion for Summary Judgment, incorporated by reference as if fully set forth herein, are true and correct copies of the following documents (the “Records”):

- Ex. 1: A certified copy of Commerce & Industry Insurance Company Commercial Umbrella Liability Policy, policy no. 24238279 issued to Missouri Basin Well Services, Inc. DBA MBI Energy Services, Inc. for the policy period April 13, 2016 through April 13, 2017 (the “CIIC Policy”).
- Ex. 2: ACORD General Liability Notice of Occurrence/Claim (“Notice of Claim”) dated January 31, 2018.
- Ex. 3: Letter from Leslie C. Thorne, Haynes and Boone, LLP to Berkley National Insurance Company and AIG Claims, Inc. dated June 29, 2018.
- Ex. 4: Letter from Pranathi Prabhakara, AIG Claims, Inc. to Leslie Thorne, Haynes and Boone, LLP dated October 5, 2018.

4. The Records were received or created by current or former employees or representatives of CIIC. The Records are kept by CIIC in the regular course of business and are in my custody or subject to my control, supervision, or direction. It is the regular course of business of CIIC for an employee or representative of CIIC, with knowledge of the acts, events, conditions, and other information recorded to make the Records or to transmit information thereof to be included in such Records. The Records were made at or near the time when the

acts, events, conditions and other information contained therein occurred, were observed or rendered. The Records attached hereto are the originals or exact duplicates of the originals.

5. On or about January 31, 2018, CIIC received the Notice of Claim. The Notice of Claim attached a copy of the summons and complaint in the lawsuit styled *Chad Maheu v. XTO Energy, Inc. et al.*, Case No. 1:17-CV-102, filed in the United States District Court for the District of North Dakota. The Notice of Claim states the “Date of Occurrence and Time” is “06/18/16” and provides the following “Description of Occurrence”: “It is alleged that defendants failed to control and/or shut down the well which resulted in an explosion and flash fire. As a proximate result of a blow-out, explosion and fire many were injured and one was killed.” (the “Accident”). The January 31, 2018 Notice of Claim was CIIC’s first notice “in writing” of the Accident or of the “commencement” of “any discharge, dispersal, seepage, migration, release or escape of Pollutants” from the Ryan Well. CIIC did not receive notice “in writing” of the Accident or of the “commencement” of “any discharge, dispersal, seepage, migration, release or escape of Pollutants” from the Ryan Well within 21 calendar days of the “commencement” of “any discharge, dispersal, seepage, migration, release or escape of Pollutants” from the Ryan Well becoming known to MBI or XTO.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 5th, 2020



ELVIRA BARISANO
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02BA6007405
Qualified in Kings County 22
Commission Expires May 18, 20